

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: 07/13/2017
POSITION: Oppose

BILL NUMBER: SB 687
AUTHOR: Skinner, Nancy

BILL SUMMARY: Health facilities: emergency services: Attorney General.

This bill requires a nonprofit corporation that operates a health facility that includes a licensed emergency center to obtain written consent from the Attorney General (AG) prior to a planned elimination or reduction in its level of emergency medical services. The bill also prohibits the licensure of stand-alone emergency rooms, departments, or centers.

FISCAL SUMMARY

The Department of Justice estimates General Fund costs of \$339,000 in fiscal year 2017-18, and ongoing annual General Fund costs of \$553,000, thereafter, as a result of this bill. Costs include one full-time Deputy Attorney General, one auditor, one analyst, and one legal secretary, as well as other costs, including expert witness contract fees.

COMMENTS

The Department of Finance is opposed to this bill because it creates General Fund costs that are not included in the Administration's current fiscal plan. Additionally, existing procedures are already in place for hospitals to notify the Department of Public Health and local government agencies prior to downgrading or closing emergency service centers. Under this existing process, local agencies conduct impact evaluations to assess how a reduction or closure will affect emergency services in the community. The costs and burdens created by this bill are too great to justify adding a duplicative layer of statutory oversight.

Under this bill, nonprofit health facilities would be required to notify the AG 135 days prior to a planned reduction in the level of their emergency service offerings, including the closure of health facilities. The AG would then have the authority to approve or reject the changes, or place conditions on approval of the changes.

Generally, financially healthy nonprofit hospitals tend to stay open, maintaining or expanding the services they provide. Hindering those that need to close departments or reduce services due to financial hardship does not address the underlying reasons that hospitals are struggling to stay afloat, particularly in their emergency service offerings. Hospital emergency departments are the most expensive to maintain because of required staffing, clinical expertise, ancillary services, and federal law that prohibits denying emergency care to anyone regardless of their ability to pay.

It is unclear what would be achieved if a hospital was required to maintain financially insolvent emergency care facilities. Under this bill, hospitals may be forced to reduce or eliminate other services to maintain emergency care. Promoting emergency services at the cost of other services is undesirable, especially in light of the fact that emphasizing preventative care has been shown to drive health care costs down, while relying on emergency care drives cost up. Alternatively, hospitals may continue operating as normal, running up large amounts of debt that is unlikely to ever be collected, at the expense of creditor-businesses and, eventually, the patients served by the hospital.

Analyst/Principal (0212) M.Tollefson	Date	Assistant Program Budget Manager Amy Jarvis	Date
Department Deputy Director		Date	
Governor's Office:	By:	Date:	Position Approved _____ Position Disapproved _____
BILL ANALYSIS			Form DF-43 (Rev 03/95 Buff)

Skinner, Nancy

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COMMENTS (continued)

Additionally, we note policy concerns with extending the AG's jurisdiction to former emergency health facilities that have closed and do not hold active licenses. In a 2017 bankruptcy case, *In re: Gardens Regional Hospital and Medical Center, Inc.*, the court addressed the issue of whether current California law allowed the AG to impose conditions on the sale of such a facility, finding that an entity which was closed and did not hold an active license would not qualify as a "health facility," and therefore would not be subject to the AG's conditions.

The *Gardens Regional* court found that the state interest in preserving charitable health facilities for the benefit of the uninsured is not implicated by the sale of a former hospital's assets. In the *Gardens Regional* case, the conditions imposed by the AG materially affected the ability of the nonprofit corporation to sell its remaining assets to a successor that could reopen the facility and provide health care services to the community. While this bill intends to promote the availability of health services in underserved and disadvantaged communities, by allowing the AG to impose conditions on the sale of a health facility that is no longer operational, this bill may actually thwart that availability.

This bill's prohibition on the licensure of stand-alone emergency rooms may also have the opposite effect of what this bill purports to do. A one-size-fits-all prohibition will not serve the needs of California's diverse communities, and it is unclear what is gained from a blanket ban. Although stand-alone emergency centers are a largely untested model in California, they have gained wide traction in other states, with a 2013 Kaiser Health article stating that they had doubled to more than 400 in number, between 2009 and 2013.

Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)							
	LA	(Dollars in Thousands)							
	CO	PROP					Fund		
	RV	98	FC	2017-2018	FC	2018-2019	FC	2019-2020	Code
0820/Justice	SO	No	C	339	C	553	C	553	0001